

## **Chapter 5    Quarantine and Prevention of Disease Ordinance (Cap. 141)**

### **Finding of facts**

5.1        The Select Committee notes that the Quarantine and Prevention of Disease Ordinance (Cap. 141) provides the law relating to quarantine and the prevention of disease among human beings. Under the Ordinance, the Director of Health (D of H) is empowered to undertake various measures for the purpose of preventing the spread of infectious diseases specified in the First Schedule to Cap. 141. Although the World Health Organization (WHO) named the disease Severe Acute Respiratory Syndrome and issued an emergency travel advisory on 15 March 2003, the disease was only added to the First Schedule to Cap. 141 on 27 March 2003. D of H, therefore, was not able to exercise any of the powers conferred by the Ordinance in respect of SARS before that date. This part of the Select Committee's inquiry focuses on the timing of adding SARS to the First Schedule to Cap. 141 and related issues.

### The need for quarantine measure raised by the Prince of Wales Hospital

5.2        The Cluster Chief Executive (New Territories East)/Hospital Chief Executive of the Prince of Wales Hospital (PWH), Dr FUNG Hong, told the Select Committee that in the first week of the outbreak at PWH, the need to quarantine contacts and even patients who had not been infected was discussed. The Dean of the Faculty of Medicine (the Faculty) of The Chinese University of Hong Kong (CUHK), Professor Sydney CHUNG Sheung-chee, and Professor WONG Tze-wai of the Faculty also told the Select Committee that in their view, quarantine of contacts was the key to the control of the spread of the disease. While staff members of the Faculty and PWH appreciated the need to quarantine contacts and even patients who had not been infected in order to make the closure of a hospital or a ward of a hospital effective, the Chief Executive of the Hospital Authority (HA), Dr William HO Shiu-wei, told the Select Committee that during his visits to PWH, the PWH management never raised the matter with him.

5.3 The Select Committee noted that at the time of the PWH outbreak, D of H did not have the power to quarantine contacts of SARS patients because “Severe Acute Respiratory Syndrome” had not yet been added to the First Schedule to Cap. 141. The Select Committee also noted that the need to quarantine contacts was raised with D of H, Dr Margaret CHAN FUNG Fu-chun, by Professor CHUNG on 19 March 2003. However, the Chief of Service of the Department of Medicine and Therapeutics in PWH, Professor Joseph SUNG Jao-yiu and Professor CHUNG told the Select Committee that they did not specifically ask PWH to request the Department of Health (DH) to exercise quarantine measure because they did not know how the mechanism for quarantining contacts was to be triggered off.

5.4 Professor CHUNG sent a letter by fax to Dr CHAN on 19 March 2003 citing the case of a doctor who had symptoms but stayed at home and, as a result, infected his family. Professor CHUNG urged Dr CHAN to urgently consider all possible measures including quarantine to contain the outbreak before it was too late. Professor CHUNG also called Dr CHAN on the same day to discuss his letter.

5.5 According to Dr CHAN, when Professor CHUNG asked her if someone suspected to be suffering from SARS could be removed from home, her answer was that SARS had not been included in the law yet. However, if Professor CHUNG had reasons to believe that a person suffering from an infectious disease were to refuse hospitalization, she was sure that she would do something if Professor CHUNG reported the case to her. Dr CHAN explained to the Select Committee that amending the law could be done easily. She held the view that DH had, from the beginning of the PWH outbreak, the full support from doctors in voluntarily reporting cases and a system for medical surveillance. Patients were also cooperative and DH could persuade them to take its advice.

5.6 Dr CHAN also told the Select Committee that Professor CHUNG was getting emotional on the phone and that she tried to pacify him. Professor CHUNG, on the other hand, told the Select Committee that in their conversation, Dr Margaret CHAN was dismissive (“耍佢”), and said that contact tracing would be sufficient to deal with the current situation. He

specifically raised with Dr CHAN that some of his colleagues who were suspected of having been infected refused to be admitted to hospital, and there was nothing he could do about it. Dr CHAN responded that if he would let her have the details, she would “deal with” (“泡製”) them.

#### “Community outbreak” of SARS in mid-March 2003

5.7 At a press briefing held in the afternoon of 14 March 2003, the Secretary for Health, Welfare and Food, Dr YEOH Eng-kiong, told the media, among other things, the following: “In Hong Kong, every month we have 1 500 to 2 000 cases of pneumonia, and about half we can identify the bacteria and the other half usually we can’t. The pattern had not changed and our experience is similar to those of other developed countries. So we are not talking about any outbreaks in the community, and that is why yesterday we were talking about particularly looking at a particular group”. Dr YEOH also urged that the media should release very accurate message in order not to make the international community think that there was an outbreak of atypical pneumonia (AP) in Hong Kong, as it would be harmful to Hong Kong.

5.8 Dr YEOH conveyed a similar message to Legislative Council (LegCo) Members at a special meeting of the LegCo Panel on Health Services held in the same afternoon. Apart from briefing the Panel on the outbreak at PWH, Dr YEOH pointed out to the Panel that the Administration had not been downplaying the severity of the infection among healthcare workers (HCWs) in PWH, and there was no sign of the infection spreading to the community at that stage. He also urged people not to depict Hong Kong as an infected place because not only was it untrue, but it would also cause alarm in the community. The Select Committee noted that at another press briefing on 15 March 2003, Dr YEOH told the media that “Hong Kong is actually safe and no different from any other big cities in the world”. The Select Committee also noted that Dr YEOH held another press briefing together with local experts in the field on 18 March 2003 about the AP situation in Hong Kong.

5.9 Responding to the Select Committee’s question as to why he had said that there was no sign of the infection spreading to the community on 14 March 2003, Dr YEOH explained that the term SARS had not been coined

at that time. The term “atypical pneumonia”, which had been in use since 1930s, was a generic term for a mixed bag of pneumonias which embodied causes from different viruses or bacteria, and sometimes the cause was not identifiable. The public perception at that time was that AP was a unique and specific entity, and it was equated with the disease of what was then known as AP in Guangdong. When he talked about the outbreak, he was referring to Community-Acquired Pneumonia, not SARS. According to Dr YEOH, he had tried to explain to the public the distinct subset of Community-Acquired Pneumonia (now known as SARS) and that there was a special outbreak situation of the subset, clustering in healthcare settings.

5.10 Dr YEOH also explained that his remarks were based on two sets of information presented to him by HA and DH at two meetings held on 13 March and 14 March 2003 respectively which were attended by experts in the field and from WHO. The first set of information was the local surveillance data which showed no unusual increase of pneumonia cases in the community. The second set of information was the data collected from the surveillance on Severe Community-Acquired Pneumonia carried out by HA and DH. Specifically, DH reported that no unusual pattern of influenza and pneumonia cases had been observed in the community, and that their investigation into the outbreak at PWH and the subsequent contact tracing thus far had shown no abnormal outbreak in the community. He pointed out that at that time the linkage of AA to the M Hotel had not yet surfaced.

5.11 On the question of whether the Government had sought to downplay the severity of the spread of infection within the community at that time, Dr YEOH told the Select Committee that the Government adopted an open and transparent approach in releasing information to the public. The objective of holding the press briefing on 14 March 2003 was to provide as much updated information as possible for the public so that the public would understand the situation and take precautions as appropriate. He stressed that he was not trying to downplay the severity of the problem, and that the impact of the outbreak on the tourism and economy of Hong Kong was not the primary consideration. According to Dr YEOH, the intention was to provide all the information to the public so that they would not have any undue panic.

5.12 Explaining to the Select Committee why he had said at the press briefing that Hong Kong was absolutely safe and was no different from any other big city in the world, Dr YEOH said that there were only four clusters of infection relating to HCWs at that time and that there were no widespread cases in the community. He stressed that what he had said was in the context of background Community-Acquired Pneumonia, and that he only wished to give as much information as possible to the international community so that people could determine for themselves what the risks would be when visiting Hong Kong.

5.13 Dr YEOH also referred to the conclusion of the SARS Expert Committee which stated that what he had said “was technically correct, and was genuinely intended to allay public panic”. According to the SARS Expert Committee, there was no evidence to suggest that the debate had lowered public alertness to the threat of SARS.

5.14 Dr YEOH, however, offered at the beginning of the public hearing of the Select Committee on 13 March 2004 an apology to the public, the dead, families of the dead, people infected and HCWs for any possible misunderstanding caused by his communication in this respect.

#### Warning on the spread of the disease in the community

5.15 Dr FUNG told the Select Committee that he first got worried about the unknown disease spreading in the community on 13 March 2003 when the nephew of the index patient of the SARS outbreak at PWH, *JJ*, a small child attending kindergarten, was infected. The evidence before the Select Committee suggests that during the SARS outbreak at PWH, this concern was largely shared by staff members in PWH and the Faculty.

5.16 Professor CHUNG told the Select Committee that in his view, there should be maximum transparency in handling an epidemic, and that the public should be informed of the highly infectious nature of the disease so as to place the public on a high level of alertness which in turn would help control the infection. Three days following Dr YEOH’s press briefing on 14 March 2003, Professor CHUNG sounded out a warning to the media on 17 March

2003 that there was an outbreak in the community. Professor CHUNG told the Select Committee that Dr YEOH rang him up the following day saying that given his position as the Dean of the Faculty of Medicine of CUHK, what he had said might cause panic. Dr YEOH, however, explained to the Select Committee that his main intention of telephoning Professor CHUNG was to try to understand what the concerns of PWH were and whether Professor CHUNG was in possession of information which was not available to him.

5.17 Professor CHUNG informed the Select Committee that having been frustrated by Dr CHAN's response to his letter of 19 March 2003, he raised his concern about the possibility of human-to-human spread of the disease in the community with Dr YEOH on 20 March 2003 when he had a chance of speaking with Dr YEOH after a staff forum in PWH. Dr YEOH, however, did not seem to be convinced. Professor CHUNG also told the Select Committee that even one year after the SARS outbreak, he was still puzzled why the Government could not see the seriousness of the situation at that time.

5.18 Dr YEOH explained to the Select Committee that he had all along believed that the transmission mode of SARS was human-to-human and therefore the concern raised by Professor CHUNG was not new to him. In his view, the main issue in the conversation between him and Professor CHUNG was how to control the spread of the disease and the solution was timely contact tracing. As Dr FUNG also brought to his attention that contact tracing in respect of the PWH cases was not being carried out by DH with the same vigour as before the Community Physician of the New Territories East Regional Office (NTERO) of DH, Dr AU Tak-kwong, went on sick leave<sup>5</sup>. Therefore, Dr YEOH's understanding was that the message Professor CHUNG and Dr FUNG relayed to him was related to the timeliness of the contact tracing work for PWH cases. Professor CHUNG's perception that contact tracing was not being conducted satisfactorily might have given him the impression that the Government had not given the matter sufficient attention.

5.19 Dr YEOH also pointed out that those in the frontline and those in the Government might have different perception of how the SARS outbreak

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<sup>5</sup> The Select Committee notes that Dr Teresa CHOI Man-yan took up the duties of Dr AU from 18 to 21 March 2003 when the latter was on sick leave.

should be and had been handled. Despite the differences, Dr YEOH stressed that the Government had viewed seriously the outbreak at PWH and its impact on the community. He told the Select Committee that he visited the Hospital quite a number of times to understand the situation in the early days of the outbreak. On 13 March 2003, he instructed that a steering group chaired by himself and an expert group chaired by the Deputy D of H, Dr LEUNG Pak-yin, should be formed. On 14 March 2003, it was decided that the two groups should be merged to become the Health, Welfare and Food Bureau (HWFB) Task Force to better coordinate the Government's efforts in combatting the emerging infectious disease. Dr YEOH also kept the Chief Executive of the Hong Kong Special Administrative Region (HKSAR) informed of developments. The Chief Executive also made a visit to PWH on 14 March 2003. Since then, he had been briefing the Chief Executive on the development of the epidemic on a daily basis, and sometimes even a few times a day.

5.20 According to Professor CHUNG, he was aware that the Consultant Community Medicine in-charge of the Disease Prevention and Control Division of DH, Dr TSE Lai-yin, made a public statement on 15 March 2003 that if there were no new SARS cases in the coming week, the SARS outbreak could be contained. On 20 March 2003, two private medical practitioners came down with the infection after seeing patients from Ward 8A in PWH and their contacts. On learning that the two private medical practitioners had not been contacted by DH<sup>6</sup>, members of the Faculty were very concerned about the apparent tardiness of the contact tracing work being carried out by DH. As there was increasing concern in the Faculty that the Government was nonchalant towards the outbreak and there was a lack of appreciation of the seriousness of the latest situation, members of the Faculty decided to invite Dr HO to attend a meeting at 10:00 pm on 20 March 2003 so as to brief him on the latest development. After hearing their presentation, Dr HO was convinced of the possibility that the disease had spread in the community and undertook to convey the concern to Dr YEOH.

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<sup>6</sup> See paragraph 6.92 of Chapter 6 for the follow-up action taken by DH in respect of the two private medical practitioners.

5.21 On 21 March 2003, the Faculty's Executive Committee held a meeting to discuss how best it could keep the public informed of the latest state of the outbreak without at the same time giving rise to panic within the community. Subsequent to the meeting, the Faculty issued warnings to the medical practitioners in private practice to the effect that SARS had already spread to the community. The Faculty also sent a delegation to see the Chairman of HA, Dr LEONG Che-hung. Dr LEONG subsequently rang Dr YEOH to relay the concern. According to Dr YEOH, he was concerned about the development and contacted Dr LEUNG Pak-yin. He understood from Dr LEUNG that Dr LEUNG was already visiting PWH and NTERO of DH to investigate the concern. Dr YEOH then asked Dr LEUNG to strengthen the contact tracing work in PWH.

#### Making SARS a statutory notifiable disease

5.22 On 15 March 2003, WHO issued the emergency travel advisory and named the disease Severe Acute Respiratory Syndrome. The emergency travel advisory was issued to put the international community on high alert that SARS was a worldwide health threat. It also offered guidance to travellers, airline crew and airlines, so that they were aware of the main symptoms and signs of SARS for their own protection and/or for alerting the destination airport. In response, the Government issued letters to all airlines via the Airport Authority to alert them to the travel advisory and provide advice on ways to deal with suspected SARS cases on board aircraft.

5.23 Dr LEUNG Pak-yin informed the Select Committee that when Singapore included SARS as an infectious disease in its statutes on 17 March 2003, he suggested to Dr Margaret CHAN that SARS be made a statutory notifiable disease under Cap. 141. Noting that the authority to include an infectious disease in the First Schedule to Cap. 141 rested with D of H and this could be done speedily by making a simple order, they agreed that it was not necessary to go ahead with the enactment at that point in time.

5.24 Dr LEUNG also informed the Select Committee that on being notified of six suspected SARS cases in the Amoy Gardens in the morning of 26 March 2003, he discussed with Dr CHAN the need to take more stringent



health intervention measures. Dr CHAN was also concerned about the mounting caseload of contact cases and the limited capacity of the Accident and Emergency Departments (AEDs) in hospitals. After discussion, they came up with a basket of measures which Dr CHAN put to the HWFB Task Force at its meeting held later that day. The measures included the establishment of designated medical centres (DMCs) and the implementation of health declarations at border control points. To facilitate the implementation of the measures, it was also recommended that SARS should be added to the First Schedule to Cap. 141.

5.25 Dr LEUNG recalled that making the amendment to the First Schedule was straightforward. There was no discussion about the name of the disease or its case definition at the HWFB Task Force meeting on 26 March 2003. Dr CHAN also did not formally or informally discuss with staff of DH whether the name of the disease should include the word “Acute”. Dr LEUNG considered that the name accurately reflected the symptoms of the disease. DH, however, was instructed by HWFB via an email that in public relations matters and communications with the public, the short form “SRS” should be used when referring to the disease of Severe Acute Respiratory Syndrome.

5.26 Dr CHAN told the Select Committee that following the naming of SARS by WHO on 15 March 2003, the only hindrance to amending the law was that the name and case definition of the disease had not yet been made clear. Dr CHAN described to the Select Committee that there were “those among us” who disagreed with the case definition of the disease as well as those who disagreed with its name.

5.27 Dr CHAN explained that it was necessary to discuss with WHO whether the case definition should be refined. The criteria of having a fever of over 38°C and having a recent history of travel to areas with cases of SARS being reported would create implementation difficulties for Hong Kong because an outbreak of SARS had already occurred in the territory. Applying such criteria would mean that all persons in Hong Kong having a fever of over 38°C would have to be treated as SARS patients. Without a clear case definition, medical practitioners might breach the law by not making

notification in respect of cases which fitted the WHO case definition. In addition, the same name and case definition should be used by all countries so that there would be no misunderstanding in the international community.

5.28 Dr CHAN also explained that when SARS was officially named by WHO on 15 March 2003, the cause of the disease was still unknown and it was very difficult to diagnose. DH was monitoring the situation closely, and there were several important developments between 15 March and 27 March 2003. First, the University of Hong Kong announced on 22 March 2003 that coronavirus had been identified as the agent responsible for the SARS infection. Second, there was the need to set up DMCs having regard to the heavy workload of AEDs in public hospitals. The overriding factor for her in deciding to amend the law, however, was the need to control the spread of the infection at the border. Dr CHAN pointed out that around 24 March and 25 March 2003, the Tuen Mun Hospital reported a number of SARS cases involving persons who had returned from the Mainland. Dr CHAN considered that she could no longer wait as she needed the statutory power under Cap. 141 to prevent persons infected or suspected to have been infected with SARS from entering or leaving the territory, and that the name of SARS should be used in amending the law.

5.29 Dr CHAN said to the Select Committee, “the discussion should come to an end. Even if other people still wished to discuss with WHO or any other organization, they could continue to do so, whether academically or technically, but I must go ahead to implement the law”.

5.30 Regarding the name of SARS, Dr CHAN told the Select Committee that Dr YEOH was among those who were of the view that SARS, which was coined by WHO, was inappropriate to HKSAR. She had forgotten who the other persons were but she did not think that the Chief Executive was one of them. In retrospect, she felt that the biggest difference between her view and that of Dr YEOH was in this regard. She considered that they should not dwell upon the problem of the name of the disease. It was not possible to argue with WHO as WHO had its own considerations, and it had a team of experts to determine the naming and case definitions of diseases. She did not have any discussion with WHO on the naming of the disease.

5.31 Dr CHAN told the Select Committee that had there not been any problem with the naming and case definition of SARS, the law could have been amended on 16 March or 17 March 2003. Dr CHAN considered that it would definitely have helped, both in terms of border control for the purpose of preventing the spread of the disease, and the setting up of DMCs, if the law had been amended earlier. As far as border control was concerned, it was obvious at that time that the disease could spread through international travel. Border control should be put in place as soon as there was indication that the disease could spread from one place to another through travel, in particular, air travel.

5.32 As regards DMCs, Dr CHAN explained that given the increasing number of patients, it was necessary for DMCs to be set up, where health screening and temperature check could be performed and, if a contact was found to be symptomatic, a chest X-ray examination would be conducted. If DMCs were not set up in time, all the close contacts of SARS patients requiring medical surveillance would have to go through AEDs in hospitals, thus further overloading the hospital system.

5.33 In her letter dated 30 March 2004 to the Select Committee, Dr CHAN summed up her reason for not amending the law until 26 March 2003 as follows: “it should be noted that DH had from the early stage the full support from doctors in voluntarily reporting cases and a system for implementing medical surveillance. Given the above and the fact that the relevant process for the inclusion of SARS as a notifiable infectious disease in Cap. 141 could be completed speedily, there was no pressing need for the legislative amendment until 26 March 2003 when I put forward the basket of public health measures. I therefore did not press ahead with the amendment earlier in the light of the evolving case definition and the views expressed on SARS/SRS”.

5.34 Dr CHAN pointed out to the Select Committee that although Cap. 141 provided that D of H was the authority to amend the First Schedule, as a matter of practice, any amendment to the Ordinance required policy support by HWFB, i.e. the agreement of HWFB would be required administratively before D of H would be able to effect amendment to the Ordinance.

5.35 Dr YEOH told the Select Committee that at the HWFB Task Force meeting on 26 March 2003, it was noted that there was a need to modify public health measures given the emergence of cases from the Amoy Gardens. Dr CHAN recommended a basket of measures which included adding SARS to the First Schedule to Cap. 141, requiring inbound and outbound passengers to complete health declaration forms, setting up medical surveillance posts at border checkpoints, and setting up DMCs at designated locations to screen contacts of SARS patients. He agreed with the recommendation to amend the law and indicated his policy support.

5.36 The Select Committee noted that at the Chief Executive's Steering Committee (CESC) meeting on 26 March 2003, Dr CHAN reported that "she would get all the necessary powers once she had declared SARS as the controlled disease under the existing ordinance. The declaration would be gazetted on the next day". According to the Director of the Chief Executive's Office, Mr LAM Woon-kwong, CESC expressed support for Dr CHAN's proposal to add SARS to the First Schedule to Cap. 141 without any queries. Mr LAM pointed out that although the approval of CESC was not required for the amendment, he considered it appropriate for Dr CHAN to have sought the support of CESC.

5.37 Dr YEOH pointed out to the Select Committee that prior to the Task Force meeting on 26 March 2003, the issue of adding SARS to the First Schedule to Cap. 141 had never been brought up. Dr YEOH said to the Select Committee, "it is only when we are advised that there is a need we would discuss it. If there is no advice of a need, we would not discuss it". Dr YEOH also told the Select Committee that he was not aware of the need to amend the law at that time. Both in terms of expertise in and responsibility for public health matters within the government structure, D of H was the public health authority in Hong Kong and there was also a large team of public health officials specializing in public health matters in DH. He and the Government depended on Dr CHAN for professional advice.

5.38 Regarding the name of the disease, Dr YEOH explained to the Select Committee that when the acronym "SARS" was coined by WHO as the abbreviation for Severe Acute Respiratory Syndrome, he expressed a concern

about “the labelling of using the abbreviation of ‘SARS’ and the labelling of this in terms of the similarity with our Special Administrative Region, SAR”. He asked Dr CHAN to discuss with WHO to see whether there was any opportunity to change the abbreviation “SARS”. He thought that it was reasonable to do so as the name was new and had not stuck in people’s minds. There was an opportunity to change it so that there would not be any confusion with the Special Administrative Region, or SAR.

5.39 Dr YEOH further explained that the use of the acronym “SRS” was just a convenient way to avoid this “labelling” effect at the early stage. What he wanted was to get WHO to come up with an equivalent term which might not necessarily be “SRS”. Dr YEOH considered that it was only natural to be concerned about Hong Kong’s image but it did not mean that such consideration should override everything else. If something could be done about this “labelling effect”, it would be helpful to a small extent. Dr YEOH could not recall exactly when he asked Dr CHAN to talk to WHO on the matter. It was probably a day or two, or two or three days after WHO had named the disease SARS. He did not insist on getting the name changed and was not aware that Dr CHAN did not negotiate with WHO in this regard.

5.40 Dr YEOH also told the Select Committee that he did not have any recollection of whether the Chief Executive had expressed an opinion on the disease being called SARS. He probably mentioned to the Chief Executive his views when he informed the Chief Executive of what he was doing in handling the epidemic and some of his concerns. At the early stage of the epidemic, when the name and case definition of the disease were put forward by WHO, it was considered that there were difficulties in the case definition and they were reflected to WHO. Dr YEOH pointed out that WHO amended some of the criteria used in the case definition because it was a new disease. The case definition evolved with time, and this was sometimes based on the input from Hong Kong because Hong Kong had a large number of cases. He would have reflected these developments to the Chief Executive but he had no recollection of the Chief Executive expressing any views on the name of the disease.

5.41 Mr LAM informed the Select Committee that the Chief Executive did not express any concern about the acronym “SARS/SRS”, and that there was no discussion on the matter at meetings of CESC.

5.42 As regards the instruction given by HWFB to DH via an email that the short form “SRS” should be used, Dr YEOH explained to the Select Committee that he was not aware of the details of such communications. He believed that his colleagues probably had taken their own initiative to have “instituted certain communications” because they knew that he had expressed his wish to try to get WHO to change the abbreviation of the name of the disease.

5.43 Dr YEOH stressed that the use of the name “SRS” instead of “SARS” had never been, at any stage, a hindrance to the Government when amending the law. There was no discussion on the use of “SARS/SRS” at meetings of the HWFB Task Force or any other meetings where the inclusion of SARS in the list of infectious disease was considered. He had raised the matter with Dr CHAN on one occasion only. He expected Dr CHAN to act on it, and if there had been difficulties she would have come back to him. He had been waiting for Dr CHAN’s response but none came. He did not raise the matter again because there were other things foremost in his mind during the SARS epidemic.

5.44 Dr YEOH said to the Select Committee, “there were other priorities that we needed to interact with the World Health Organization, because we needed support from the World Health Organization for our work. And it would not be useful for us to debate and argue with the World Health Organization on the name unless it could be done very quickly”. After the HWFB Task Force meeting on 26 March 2003, he confirmed that the full name “Severe Acute Respiratory Syndrome” should be used in the gazette order, in line with the approach adopted for other infectious diseases in the legislation.

5.45 Dr YEOH recalled that at the early stage of the outbreak, Hong Kong had difficulties with the case definition of SARS. He pointed out to the Select Committee that discussion on the case definition should not have been a hindrance to amending the law either. The case definition changed

with time. As little was known about SARS, the case definition was evolving and it would still be denoting the same disease. One could not wait for the case definition to become stable before the law was amended. He could not understand why Dr CHAN thought that the case definition was an issue. Dr YEOH considered that adding SARS to the First Schedule to Cap. 141 at an early stage would be a prudent move because the amendment enabled the Government to take measures such as the Isolation Order imposed on Block E of the Amoy Gardens. However, before 26 March 2003, the need to amend the law had never been brought up by DH and he was not aware that DH was unable to perform its public health functions without the legal backing. In Dr YEOH's view, whether the law should have been amended immediately following WHO's announcement on 15 March 2003 or whether the Government should have waited until 27 March 2003 was a matter of judgement.

Graduated enhancement approach in introducing public health control measures and the use of quarantine measure

5.46 Dr YEOH told the Select Committee that he was not aware of the inclusion of SARS as an infectious disease by Singapore in its statutes on 17 March 2003. Around 24 March 2003, Dr YEOH asked Dr CHAN whether Hong Kong should follow Singapore in enacting its quarantine laws. He was advised by Dr CHAN that there would be practical difficulties in enacting quarantine laws in Hong Kong. There would also be issues relating to public health. Dr YEOH also told the Select Committee that he understood from the public health community that there were concerns about enacting quarantine laws in modern history, because this was something that had not been enacted in any developed countries for many decades. One concern was that the law was very intrusive because it would require people to give up their rights. The other concern was that it would have a contrary effect, i.e. these draconian powers would discourage people from coming forward for treatment. Dr YEOH pointed out that it was on the basis of these concerns that, at the meeting of CESC on 25 March 2003, he made the statement that "it was neither effective nor practical to implement such quarantine measure, although it might help alleviate some public concerns in the short run". The Select Committee learnt that at the CESC meeting on 25 March 2003, the Chief Executive had

asked whether it was necessary to take the draconian step of requiring family members of the infected patients to stay at home.

5.47 The Select Committee noted that at the CESC meeting on 26 March 2003, Dr CHAN had reported that the declaration of SARS as an infectious disease under Cap. 141 would be gazetted on the following day, and that one proposal under consideration was to require those persons who had close contacts with the infected patients to report to DH on a daily basis. The Chief Executive advised that apart from the measure requiring close contacts to report to DH, the options of home quarantine as well as requiring the suspected persons to move into a quarantine centre should be considered. The meeting then discussed the pros and cons of the three options. The following points were made. The reporting arrangement would be both effective in controlling the spread of the disease and flexible enough to be accepted by the public. The home quarantine option might provide tighter control but it would be very difficult to enforce and would put additional strain on the already very tight medical manpower. The quarantine centre option would be easier to manage logistically but it would be seen as too draconian by the public. Both the home quarantine and quarantine centre options might have the risk of forcing the suspected persons to go underground, making contact tracing work even more difficult. The Chief Executive asked Dr YEOH to talk to the experts urgently, giving further considerations to the three options to enable a decision to be made at the meeting to be held the following day.

5.48 The Select Committee noted that accordingly at the CESC meeting on 27 March 2003, Dr YEOH reported that his team had suggested that if the home quarantine option was to be selected, it should be carried out in a more liberal way, i.e. no 24-hour surveillance should be imposed and the people affected should be allowed to leave home under prescribed conditions. At the meeting, the concern about whether the imposition of quarantine measure would stop people from coming out and the spread of infection would continue as a result was also raised. The meeting agreed that no quarantine measure should be imposed at that stage. The reporting arrangement should be put in place and those who failed to comply with it should be penalized and detained. It was also agreed that the Chief Secretary for Administration, Mr Donald TSANG, would lead a team to set up a quarantine centre in case



this became necessary at a later stage, but no announcement should be made about this.

5.49 The Select Committee noted that following the decisions to issue the Isolation Order and Removal Order in respect of Block E of the Amoy Gardens at the CESC meetings held on 30 March and 1 April 2003 respectively, the question of home quarantine was revisited at the CESC meeting on 7 April 2003. At the meeting, the Chief Executive decided that quarantine should be carried out as soon as possible. The Chief Executive preferred the option of home quarantine to that of establishing a quarantine centre, but he would be open to advice as to which option would be more desirable and practical. The meeting agreed that more information from Singapore on how she operated her quarantine system on an honour basis should be sought.

5.50 Dr Margaret CHAN explained to the Select Committee that DH adopted a graduated enhancement strategy in introducing public health control measures during the SARS epidemic. Before SARS was made a statutory notifiable disease, medical surveillance of contacts of SARS patients was carried out with the contacts' cooperation. DH placed contacts under medical surveillance, and close contacts were advised not to go to work or school for at least seven days. Symptomatic contacts were referred to HA for further investigations. The need for introducing a home quarantine requirement or establishing quarantine centres had been explored. After discussing the effectiveness, viability and acceptability by the public of the measures, it was decided on 27 March 2003 that four DMCs should be set up. Starting from 31 March 2003, close contacts had to report to a DMC on a daily basis for a period of up to 10 days for medical surveillance. During this period, they were asked to remain at home and not to go out other than to attend the DMC.

5.51 According to Dr CHAN, in view of the continuing increase in the number of cases by early April 2003, it was considered necessary to introduce additional measures to avoid overloading DMCs and to minimize cross-infection in the community. At its meeting on 7 April 2003, CESC decided that quarantine of household contacts of confirmed SARS cases should be carried out as soon as possible. With effect from 10 April 2003, household contacts of SARS patients were ordered to undergo home confinement for

10 days, with no visitors allowed. Regular home visits were made by public health nurses during this period for medical surveillance. The Police also conducted spot checks to ensure compliance. At the same time, close contacts other than household contacts continued their attendance at DMCs.

5.52 Dr CHAN pointed out that as the number of SARS cases continued to increase, some overseas countries were worried that the disease would spread to their communities through international travel. CESC then considered measures to enhance control measures at border points. This led to the making of the Prevention of the Spread of Infectious Diseases (Amendment) Regulation 2003 on 15 April 2003 by the Chief Executive in Council to step up control measures to prevent the disease from being exported from or imported into Hong Kong. The Regulation was published in the Gazette on 17 April 2003 and came into force immediately. It contained explicit provisions to prohibit the departure from Hong Kong of persons who had been exposed to the risk of infection of SARS. It also provided additional legal power for measuring the body temperature of and carrying out medical examination on people arriving in and leaving Hong Kong so as to ascertain whether they were likely to have been infected with SARS.

## **Analysis**

### The need for quarantine measure raised by the Prince of Wales Hospital

5.53 In the first week of the outbreak, the management of PWH and members of the Faculty of Medicine raised the need to quarantine the contacts of infected persons and even patients who had not been infected, but they were uncertain of how the power could be invoked. They were also not aware of the need to add SARS to the First Schedule to Cap. 141 in order that the necessary statutory powers could be exercised. In his letter dated 19 March 2003 to Dr Margaret CHAN, Professor CHUNG urged Dr CHAN to consider all possible measures including quarantine to contain the outbreak before it was too late.

5.54 The Select Committee is of the view that Dr CHAN should have, at that juncture, seriously considered adding SARS to the First Schedule to Cap. 141 as swift actions might have to be taken to hospitalize uncooperative infected persons to control and prevent the spread of the disease. The delay by even one day could have made much difference.

“Community outbreak” of SARS in mid-March 2003

5.55 The Select Committee has examined in detail what Dr YEOH said at a press briefing on 14 March 2003 in respect of the AP situation in Hong Kong. Dr YEOH explained that the purpose of his press briefing was to provide as much updated information as possible for the public. Dr YEOH said, among other things, that, based on the surveillance data collected, there was no sign of the infection spreading in the community. Dr YEOH, however, also made the point at another press briefing on 15 March 2003 that Hong Kong was safe and was no different from any other big city in the world. The Select Committee considers that as the policy secretary responsible for health matters, Dr YEOH should have refrained from commenting on the impact of the outbreak on Hong Kong’s tourism and economy. As a result, not only were his messages confusing and misleading, but they also gave the public the impression that he was trying to downplay the severity of the outbreak.

5.56 Dr YEOH explained to the Select Committee that he had not tried to downplay the extent of the infection. Although there is no evidence to show that Dr YEOH had such an intention, the Select Committee considers that his remarks might well have given the public such an impression. The Select Committee notes that little was known about the disease at that time, and that the other clusters of cases, such as those at the M Hotel, had not yet surfaced. The Select Committee also notes that Dr YEOH did not seek to hide the outbreak from the international community. WHO was notified of the outbreak at PWH on 12 March 2003 with the result that the global warning about cases of acute respiratory syndrome in Hong Kong, Vietnam and Guangdong was issued on the same day.

### Making SARS a statutory notifiable disease

5.57 Since it would take some time, however short that may be, to complete the legislative process for adding SARS to the First Schedule to Cap. 141, the Select Committee is of the view that it would have been prudent to initiate the relevant legislative work on or immediately after 15 March 2003 when WHO named the disease Severe Acute Respiratory Syndrome and issued the emergency travel advisory. Early completion of the legislative process would provide D of H with the necessary statutory powers to deal with circumstances under which the need for exercising such powers arises unexpectedly. For instance, it might have been necessary to take coercive actions under Cap. 141 urgently to deal with uncooperative infected individuals for the purpose of controlling and preventing the spread of SARS.

5.58 The Select Committee has examined whether the discussion on the case definition of SARS and the views expressed on the acronym “SARS/SRS” had hindered or prevented Dr CHAN from amending the legislation earlier. The Select Committee is of the view that the evidence given to the Select Committee does not support that this was the case. Regarding the case definition, the Select Committee considers that since the case definition was still evolving at that time and making SARS a notifiable disease involved simply adding the name to the First Schedule to Cap. 141 without the need to specify the symptoms and signs, the discussion with WHO in this regard should not have been a hindrance.

5.59 As regards the use of the acronym “SARS/SRS”, the Select Committee believes that some senior Government officials considered the name of the disease inappropriate because of its resemblance to the abbreviation of the Special Administrative Region, “SAR”. Such views, however, did not constitute a hindrance because little efforts were made to pursue the matter within the Government or with WHO. The Chief Executive did not express any view on the naming of the disease and there was no discussion on the matter at meetings of CESC. Dr YEOH had asked Dr CHAN to talk to WHO to get the name changed on one occasion only. There was no discussion on the matter at meetings of the HWFB Task Force and Dr YEOH did not give any instruction that the law should not be changed

until the name of the disease had been sorted out with WHO. There was in fact no discussion on the naming of the disease with WHO because Dr CHAN did not follow up the matter with WHO.

5.60 The Select Committee also notes that after it was decided at the HWFB Task Force meeting on 26 March 2003 that SARS should be added to the First Schedule to Cap. 141, Dr YEOH confirmed that the full name should be used without expressing any disagreement. The Select Committee finds no evidence suggesting that there had been an ongoing debate over the naming of the disease within the Government at the policy-making level or with WHO.

5.61 The Select Committee is of the view that Dr CHAN did not propose to amend the law until 26 March 2003 not because she was prevented or hindered from doing so, but because she did not consider that there was any pressing need for the amendment prior to that date. This is clearly evident from her various responses when the issue of amending the law, or the issue of quarantine was raised with her on a number of occasions between 17 March and 26 March 2003.

5.62 As early as 17 March 2003, Dr LEUNG Pak-yin raised with Dr CHAN whether SARS should be made a statutory notifiable disease when Singapore included SARS as an infectious disease in its statutes. Dr CHAN and Dr LEUNG decided that it was not necessary to go ahead with the enactment at that point in time. On 19 March 2003, Professor CHUNG sent a letter by fax to Dr CHAN urging her to consider all possible measures including quarantine to contain the outbreak before it was too late. Around 24 March 2003, Dr YEOH asked Dr CHAN whether Hong Kong should follow Singapore in enacting its quarantine laws. Dr CHAN responded by explaining to Dr YEOH that there would be practical difficulties in enacting quarantine laws in Hong Kong. Even after SARS was added to the First Schedule to Cap. 141 on 27 March 2003 and Dr CHAN was asked by the HWFB Task Force to exercise her statutory powers to issue the Isolation Order in respect of Block E of the Amoy Gardens on 30 March 2003, she still showed reluctance to do so, as discussed in paragraphs 8.12 to 8.23 of Chapter 8.

## **Performance and Accountability**

5.63 At the initial stage of the outbreak at PWH, the public was concerned whether there was an outbreak of the unknown disease, which had infected so many HCWs in PWH, in the community. The public looked to the Government for accurate and up-to-date information. Dr YEOH Eng-kiong, as the policy secretary responsible for health matters, gave press briefings on 14 March and 15 March 2003, during which his messages to the public were confusing and misleading, and also gave the impression that he was trying to downplay the severity of the outbreak. Although Dr YEOH had a chance to clarify his earlier remarks at a press briefing on 18 March 2003, he failed to do so.

5.64 The Select Committee is of the view that Dr Margaret CHAN, being the chief public health adviser, failed to see the need to add SARS to the First Schedule to Cap. 141 when she was alerted by Professor CHUNG on 19 March 2003 to the problem of infected persons who had refused to be hospitalized.

5.65 The Select Committee is surprised that Dr CHAN did not see the need to amend the law on 19 March 2003, when the results of the investigation into the outbreak at the M Hotel was known, to facilitate infection control measures, such as health screening, to be introduced at the border. It was clear from the findings of the investigation that the disease had in fact spread through international travel and travel between HKSAR and the Mainland. Dr YEOH, being the policy secretary responsible for health matters and the immediate supervisor of Dr CHAN, should also be held responsible.

5.66 The Select Committee is of the view that it would have been prudent to add SARS to the First Schedule to Cap. 141 immediately after WHO had named the disease, and that Dr CHAN, as the chief public health adviser, should be held responsible for not initiating action to amend the law on or immediately after 15 March 2003.